

J. 1318/81

COMMONWEALTH OF	)	IN THE SUPERIOR
PENNSYLVANIA	)	COURT OF PENN-
	)	SYLVANIA
v.	)	
	)	
JOHN McMANUS,	)	
Appellant	)	NO. 2215 PHILADEL-
	)	PHIA, 1980

Appeal from the Judgment of  
Sentence of the Court of  
Common Pleas, Criminal Division,  
of Philadelphia County, No.  
669//676 May Term, 1979.

Before HESTER, CAVANAUGH and  
DISALLE, JJ.

Per Curiam:

Judgment of Sentence Affirmed.  
DISALLE, J., did not participate in  
the consideration or review of this  
case.

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MEMORANDUM OPINION:

The appellant, John McManus, was  
adjudged guilty of several counts of  
theft by receiving stolen property on  
May 14, 1980. Prior to conviction, the  
appellant's motion to suppress was  
denied. Post trial motions for a new  
trial and in arrest of judgment were  
denied and this appeal followed, dealing

exclusively with the denial of the motion to suppress.

On April 3, 1979, a search warrant affidavit was presented by the affiant, Philadelphia Detective Albert Nespoli, to a Philadelphia magistrate for the purpose of obtaining a search warrant so that certain items of stolen property could be removed from the appellant's residence at 1810 E. Lippincott Street, Philadelphia. The affiant's source of information for the affidavit was Special Agent William Skarbeck of the FBI, who, in turn, acquired such information from an unidentified police informant.

The confidential informant told Agent Skarbeck that the appellant, William Ward and Patsy Logue were committing frequent burglaries and

thefts in New Jersey and transporting the stolen property to the appellant's residence in Philadelphia. He further informed Agent Skarbeck that he was present when stolen property was taken into the appellant's home. Within two weeks of the issuance of the warrant, the informant stated that he was inside the appellant's home and saw stolen property including silverware, jewelry, guns, coins and police radios. The appellant and his accomplice even told the informant that the property was stolen. The informant was known by the authorities in Philadelphia as one who had disclosed information leading to six arrests in the past 18 months.

The appellant and two of his accomplices, William Ward and Joseph Goodwin, had been the subjects of a

joint surveillance conducted by the Philadelphia Police Department and the FBI three months prior to the time that the search warrant was applied for. In fact, earlier on the same day that the search warrant affidavit was presented to the magistrate, the affiant and other detectives and officials proceeded to the appellant's house to execute a New Jersey fugitive warrant on William Ward. Ward was arrested that day shortly after he was observed leaving the appellant's residence and carrying a large suitcase and two travel bags. Once seized, the suitcase and travel bags were found to contain silver.

Based upon the information supplied by the informant and the results of the surveillance, probable cause was demonstrated and a search warrant for the

appellant's residence was signed and issued by Philadelphia Magistrate, Judge Abraham.

Appellant argues that the search and seizure warrant obtained by Officer Nespoli was issued without probable cause and, therefore, violated the appellant's Fourth Amendment rights. Probable cause was found wanting, the appellant maintains, because the search warrant affidavit did not satisfy the principles formulated in Aguilar v. Texas, 378 U.S. 108, 12 L.Ed. 723, 84 S. Ct. 1509 (1964) and Spinelli v. United States, 393 U.S. 410, 21 L.Ed. 637, 89 S. Ct. 584 (1969).

According to Aguilar, supra, an affidavit supplying the probable cause for the issuance of a search warrant

is sufficient even though based on hearsay and thereby not reflecting the direct personal observations of the affidavit. (sic) See also Commonwealth v. Prokopchak, 279 Pa. Super. 284, 420 A.2d 1335 (1980). However, the issuing authority must be informed of some underlying circumstances which will (1) enable him to judge independently the validity of the confidential informant's statement and (2) enable him to show that the informant was credible or the information reliable.

Appellant argues that the first prong of Aguilar test was not satisfied because the informant's scenario did not include any details that could raise his statement above mere rumor, suspicion or conjecture. According to the appellant, the informant's

statement omitted a description of the appellant's home, a disclosure of where the stolen property was hidden and a detailed description of the stolen items themselves. The appellant further alleges that Aguilar's first prong was not fulfilled because the information supplied by the informant was stale. He cites Commonwealth v. Suppa, 223 Pa. Super. 513, 302 A.2d 357 (1973), in support of this proposition. Suppa, supra, requires an issuing officer to conclude that probable cause for the issuance of a search warrant existed at the time the warrant was issued. In other words, a decision to issue a warrant must be based upon facts closely related in time to the date of issuance.



We do not agree that the information supplied by the informant for the affidavit was stale or was not sufficiently supported by underlying independent circumstances. We find it particularly significant that the informant was present in the appellant's house, saw the stolen property and even learned from the appellant and his accomplices that the property was stolen. Furthermore, it does not alarm us that these observations were made within two weeks of the issuance of the warrant. The circumstances culminating with the arrest demonstrated that the appellant's criminal activity was likely to have continued to the time of the issuance of the warrant. See Commonwealth v. Stamps, 493 Pa. 530, 427 A.2d 141 (1981).

The surveillance conducted by the police and FBI for three months prior to the issuance of the warrant, coupled with the arrest of William Ward on the date of issuance confirmed the informant's observation and demonstrated that such criminal activity was still in progress.

Suppa, then, becomes inapposite because no events there occurred over a 16 day period between the informant's observation and the issuance of a search warrant.

Next, appellant argues that the second prong of the two-part Aguilar test was not satisfied as well because the search warrant affidavit provided no basis to credit the informant's veracity.

The informant's veracity can be confirmed by an affirmative response to any of the following inquiries:

1. Did the informant give prior reliable information?
2. Was the informant's story corroborated by any other source?
3. Were informant's statements a declaration against interest?
4. Does the defendant's reputation support the informant's tip?

Commonwealth v. Albert, 264 Pa. Super. 390, 399 A.2d 1106 (1979).

We find that the informant's observations and statements were, indeed,

corroborated by other sources. For one, the affidavit was corroborated by the continuous three-month surveillance of the appellant's residence. It was also corroborated by Ward's arrest and the discovery of stolen items removed from the suitcase and handbags.

We find that the informant's reliability was demonstrated by the bringing of six other arrests following prior information produced by him. The appellant maintains that without evidence of convictions resulting from those arrests, such prior information cannot be the basis for finding the informant reliable now. We disagree. A comparison of the basis for the issuance of a search warrant with that

of a finding of guilt is tenuous. Search warrants are issued following a finding of probable cause; convictions, of course, are reached only after satisfying a much higher burden of proof. It is far more reasonable, then, to compare the factual basis for bringing an arrest with that of issuing a search warrant. In fact, this Court in Commonwealth v. Chatman, 275 Pa. Super. 5, 418 A.2d 582 (1980), recognized in dictum that arrests alone can establish the informant's credibility providing there was enough relevant information leading to those arrests. Having, therefore, affirmatively answered two of the inquiries for establishing the informant's credibility, we hold that the

second prong of the Aguilar test is satisfied as well.

If the informant's tip does not pass the two-prong Aguilar test, Spinelli v. United States, 393 U.S. 410, 21 L.E.2d 637, 89 S. Ct. 584 (1969), allows the review of other allegations to corroborate the information and thereby determine whether probable cause exists. Having already determined that the search warrant affidavit was adequate for legal search and seizure under Aguilar standards, there is no need to review the evidence within the parameters set by Spinelli, supra.

It must be remembered that great deference is given to the issuing

authority's finding of probable cause in a search warrant affidavit.

United States v. Ventresca, 380 U.S. 102, 85 S. Ct. 741, 13 L.Ed.2d 684 (1965). Affidavits for the issuance of search warrants are compiled by non-lawyers who are operating under feverish conditions in an effort to discover criminal activity before the passage of time eliminates the evidence. We must not apply, then, technical restraints on the issuance of search warrants. Rather, they must be viewed in a realistic and common sense fashion. Ventresca, supra; Commonwealth v. Frye, 242 Pa. Super. 144, 363 A.2d 1201 (1976); Commonwealth v. Matthews, 446 Pa. 65, 285 A.2d 510 (1971); Commonwealth v. Forster, 253 Pa. Super. 433, 385 A.2d 416 (1978).

Judgment of Sentence Affirmed.

DISALLE, J., did not participate in the consideration or review of this case.